ALEXANDER L. STEVAS
CLERK

NO. 80-1787

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1980

JOHN L. BREWER and ANITA W. BREWER,
Petitioners,
VS.
MEMPHIS PUBLISHING COMPANY, INC.,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

REPLY BRIEF

Joe H. Daniel
P. O. Box 1084
Jackson, Mississippi 39205
(601) 969-7607
Counsel for Petitioners

John W. Prewitt
P. O. Drawer 750
Vicksburg, Mississippi 39180

John B. Clark
B. Stevens Hazard
P. O. Box 1084
Jackson, Mississippi 39205
Additional Counsel for
Petitioners

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REPLY BRIEF

Respondent has improperly placed before this Court statements regarding alleged facts which are not found in the record. In its attempt to show "the interest of the local population of the mid-south" in Elvis Presley and "Ole Miss" football, respondent has cited seven issues of the Commercial Appeal (the newspaper owned by respondent), an issue of the Vicksburg Evening Post, various "football guides" and a letter from the Mississippi Board of Trustees of Institutions of Higher Learning. All of these documents were published after the judgment of the District Court had been entered. While these documents might or might not have been deemed relevant and admissible had they been presented at trial, petitioners submit that respondent is precluded from

presenting them to this Court since they could not have been considered by the District Court.[1] Further, these late-published documents would have had no bearing upon a determination of the status of petitioners at the time the article in question was published.

Petitioners believe that it is necessary to correct what are believed to be several misstatements of facts contained in respondent's Brief In Opposition. Respondent has represented to this Court that "the article had no effect on the Brewers' personal or family relationships, social life, or business dealings" and further that there was no competent evidence of

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[1]See Adickes v. S. H. Kress & Co., 398 U.S. 144, 157 n. 16 (1970).

actual injury presented.[2] However, the Court of Appeals found

> . . . that competent evidence concerning injury to reputation and personal humiliation, mental anguish, and suffering supported an award for damages in this case.

A18

Respondent stated that the Court of Appeals found it to be "reversible" error to submit the question of public figure status to the jury.[3] The Court of Appeals, however, did not indicate whether it found the error reversible or harmless. Petitioners submit that this is harmless error, if error at all, by virtue of the opinion of the District Court Judge on the post-trial motions

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[2]Brief In Opposition at 9,11.

[3]Id. at 11, 13 n. 59.

filed by respondent.[4] In this opinion, the District Court Judge considered the issue of public figure status, contrary to the contentions of respondent.[5]

Respondent has attempted to characterize this case as "a commonplace application of the so-called first branch of the public figure standard adopted by this court in Curtis Publishing Co. v. Butts and Gertz v. Robert Welch, Inc."[6] Respondent further claims that the Court of Appeals found petitioners had achieved "pervasive

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[4] A67-72.

[5] Respondent stated that the Court of Appeals was the first court to consider the issue in this litigation. Brief In Opposition at 13.

[6] Brief in Opposition at 12-13.

fame."[7] Contrary to these assertions, however, the Court of Appeals did not find that either petitioner was an "all-purpose" public figure. Rather, the Court of Appeals found that petitioners "were, at least at some time and for purposes of some articles, public figures . . . ."[8] This is obviously not a description of the first branch of the public figure standard adopted in Gertz. This "first branch" of the public figure standard applies to persons who "occupy positions of such persuasive power and influence that they are deemed public figures for all purposes."[9] Certainly the finding

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[7] Id. at 13.

[8] A36.

[9] Gertz v. Robert Welch, Inc., 418 U.S. 323, 345 (1974).

of the Court of Appeals did not fall within the definition of an all-purpose public figure. The Court of Appeals went beyond the standards as set forth in Gertz and held that other sub-categories of the public figure status exist.[10] In essence, the Court of Appeals did not find that either petitioner was either an all-purpose public figure or a public figure who had thrust himself to the forefront of a particular public controversy, the categories delineated in Gertz. Rather, the Court of Appeals created an additional sub-category and found that petitioners were public figures since the article in question was one "whose

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[10] A34.

content relates to Anita's fame as Presley's 'number one girlfriend.'"[11]

Respondent has quibbled with petitioners' characterization of the "Flickering Flame" article as "sensational" and "gossip."[12] However, this description did not originate with petitioners. In its first opinion, the Court of Appeals referred to the article as a "bit of false gossip."[13]

Petitioners request the Court to grant the petition for certiorari for the reasons set forth therein.

Respectfully submitted,

JOE H. DANIEL
POST OFFICE BOX 1084
JACKSON, MS 39205

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[11] A41.

[12] Brief in Opposition at 16.

[13] A53.

JOHN W. PREWITT
POST OFFICE DRAWER 750
VICKSBURG, MS 39180

JOHN B. CLARK
POST OFFICE BOX 1084
JACKSON, MS 39205

B. STEVENS HAZARD
POST OFFICE BOX 1084
JACKSON, MS 39205